



UNITED STATES PATENT AND TRADEMARK OFFICE

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DARIO CHANG
4704 NW 114TH AVE UNIT 203
MIAMI FL 33178

MAILED
OCT 07 2010
OFFICE OF PETITIONS

In re Application of Dario Chang	:	
Application No. 10/605,894	:	Decision on Petition
Filing Date: November 4, 2003	:	
For: System and Method of Promote	:	
Website Using Cycle Hits and	:	
Hits History	:	

This is a decision on the petition filed May 5, 2010, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration *under 37 CFR 1.181* must be submitted within TWO (2) MONTHS from the mail date of this decision and should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Extensions of time under 37 CFR 1.136(a) are NOT permitted.

The Address of Record

The petition requests the Office withdraw the holding of abandonment. The petition also requests the Office send future correspondence to the inventor at: "4704 NW 114 AVE unit 104 Doral FL 33178."

Since the petition is not signed, the request to change the address of record is improper and will not be entered. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

A copy of a form which may be used to change the address of record is attached. A PDF "fillable" version of the form can be found at: http://www.uspto.gov/web/forms/sb0064_fill.pdf.

Facts

The Office mailed a non-final Office action on March 2, 2009. The Office action stated, "The fax number for the organization where the application or processing is assigned is 571-273-8300." The Office action set a shortened statutory period for reply of three (3) months.

Neither a reply nor a payment for an extension of time was matched with the application. As a result, the Office mailed a notice of abandonment on November 13, 2009.

The inventor filed a letter via facsimile transmission on April 29, 2010. The first page of the letter states,

To: Alvin L Brown

To: Eric Tamber

Pages: 5

From: Dario Chang

Ph: 305-600-2773

Fax: 305-704-3887

Email: zonalibrepanama@live.com

The second page of the April 29, 2010 letter indicates the inventor electronically checked USPTO records on April 29, 2010, and discovered the examiner had not received the inventor's "first fax response." The second page of the letter also states the response sent April 29, 2010, is the same as the first response previously "sen[t] to fax 571.273.8300." The copy of the response sent April 29, 2010, is merged with the letter to the examiner.

The inventor filed the instant petition on May 5, 2009. The petition is accompanied by a copy of a facsimile transmission report indicating six pages were transmitted by facsimile from Office Depot to "A I Brown - uspto" concerning the instant application on April 5, 2009. The sending unit's report states,

703.872.9306
To Fax:
571.272.6724

Discussion

The Petition is Not Signed.

A petition must be signed in order to be granted. The instant petition is not signed. Therefore, the petition cannot be granted.

The Petition Does Not Include a Copy of the Response Petitioner Alleges Was Filed April 29, 2009.

Petitioner has not provided a copy of the response petitioner asserts was filed April 5, 2009. Although the inventor has indicated the "copy" of the April 5, 2009 correspondence filed April 29, 2010, is the same as the correspondence originally filed on April 5, 2009, the "copy" is clearly not an exact copy of the previous correspondence. For example, the first page of the "copy" includes language informing the examiner the paper is a copy of the first response. Since an exact copy of the alleged prior response has not been filed, the petition cannot be granted.

The Petition Does Not Prove a Reply was Filed April 9, 2009.

Evidence in the form of an allegation a paper was timely filed and a copy of a facsimile sending unit's report confirming transmission of a document is insufficient, without more, to establish a paper was timely filed with the Office.

The Office has promulgated a regulation, 37 CFR 1.8, which provides a procedure a party may use to ensure a paper is timely filed *and* to preserve adequate evidence of the filing of a paper when submitting a paper by facsimile transmission.

A party can establish a reply was timely filed by facsimile transmission and subsequently lost or misplaced by the Office by providing a showing under 37 CFR 1.8(b).

Although an allegation a paper was timely filed and a copy of a sending unit's report confirming transmission will not, without more, establish a paper was timely filed with the Office, the allegation and sending unit's report may be part of a showing under 37 CFR 1.8(b). 37 CFR 1.8(b)(3) states, with emphasis added,

[One of the items a petition under 37 CFR 1.8(b) *must* include is] a statement which attests on a personal knowledge basis, or to the satisfaction of the Commissioner, to the previously timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission *may be used to support* this statement.

In view of petitioner's statements and the copy of the sending unit's report confirming transmission, petitioner has satisfied the requirements set forth in 37 CFR 1.8(b)(3). Unfortunately, petitioner has *not* satisfied all the other requirements set forth in 37 CFR 1.8. Some of the other requirements are set forth below:

1. The petition must be accompanied by an identical copy of the previously filed correspondence,
2. The original correspondence must have been properly addressed, and
3. The original correspondence must have included a certificate for each piece of correspondence stating the date of deposit or transmission.

The petition fails to satisfy items 1-3 identified above.

As to item 1, the petition is not accompanied by an identical copy of the correspondence petitioner states was filed April 5, 2009.

As to item 2, the petition fails to establish the reply was sent to a proper facsimile number.

Since July 15, 2005, the Office has required most patent-related correspondence, such as the reply in this case, to be sent to a central facsimile number, which is 571-273-8300. The March 2, 2009 Office action clearly stated, "The fax number for the organization where the application or processing is assigned is 571-273-8300." The letter filed with examiner on April 29, 2010, asserts the reply was sent by facsimile transmission to 571-273-8300. However, the assertion in

the letter is inconsistent with other portions of the record. Specifically, the sending unit's report indicates the reply was sent to 703.872.9306 or 571.272.6724. In other words, the sending unit's report indicates the reply was not sent to a correct facsimile number.

As to item 3, the petition has failed to establish the reply included a certificate stating the date of transmission.

Since an identical copy of the correspondence petitioner states was filed April 5, 2009, has not been provided, the Office is unable to determine if the correspondence included a certificate and whether or not, if it did include a certificate, the certificate was proper.

The Office notes a proper certificate must be signed and may be set forth on the paper at issue or a separate paper. If the certificate is on a separate paper, the certificate must be securely attached to the other papers filed and fully and completely identify each paper being attached, e.g., reply to final rejection, Notice of Appeal, etc. The following language is an example of a Certificate of Transmission:

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. 571-273-8300) on ([date]).

Typed or printed name of person signing this certificate:

Signature: _____

The Propriety of the Reply Petitioner States Was Filed April 5, 2009

Since an exact copy of the April 5, 2009 reply has not been filed, the Office will not address the propriety of the reply at this time. However, petitioner may wish to note:

- (1) A reply to an Office action must be signed, and
- (2) A reply to a non-final Office action must meet the requirements set forth in 37 CFR 1.111(b).

37 CFR 1.111 states, with emphasis added,

The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to *every ground of objection and rejection* in the prior Office action. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

Conclusion

In view of the prior discussion, the holding of abandonment will not be withdrawn.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply to the prior Office action, the required petition fee (\$810 for a small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

A copy of a blank petition under 37 CFR 1.137(b) form is attached and a PDF "fillable" version of the form can be found at: http://www.uspto.gov/web/forms/sb0064_fill.pdf.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.¹
Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attachments: Form PTO/SB/122 (Change of Address form)
Form PTO/SB/64 (Petition Under 37 CFR 1.137(b) form)
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¹ General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.